

TITLE VII
FRANCHISE

CHAPTER 57
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

701—57.1(422) Definitions.

57.1(1) When the word “*department*” appears herein, it refers to and is synonymous with the “Iowa Department of Revenue and Finance”; the word “*director*” is the “Director of Revenue and Finance” or the director’s authorized assistants and employees; the word “*tax*” is the “franchise tax on financial institutions”; and the word “*return*” is the “franchise tax return.”

The administration of the franchise tax is a responsibility of the department. The department is charged with the administration of the franchise tax, subject always to the rules, regulations and direction of the director.

57.1(2) The term “*financial institution*” as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a nationally chartered bank having its principal office in Iowa, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Effective June 1, 1989, the term “financial institutions” as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a state bank chartered under the laws of any other state, a nationally chartered bank, a trust company, a federally chartered savings and loan association, a non-Iowa chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Unincorporated privately held financial institutions are exempt from the franchise tax filing requirements.

57.1(3) The term “*Internal Revenue Code*” means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

This rule is intended to implement Iowa Code section 422.61.

701—57.2(422) Statutes of limitation.

57.2(1) Periods of audit.

a. The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitation does not apply in the instances specified below in paragraphs “*b*,” “*c*,” “*d*,” “*e*,” “*f*,” and “*g*.”

b. If a taxpayer fails to include in the taxpayer’s return such items of gross income as defined in the Internal Revenue Code, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extension of time for filing, whichever time is the later.

c. If the taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the statutes of limitation so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. In addition to the periods of limitation set forth in paragraph "a," "b," "c," "d," or "e," the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer, *Van Dyke v. Iowa Department of Revenue and Finance*, 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached thereto shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, Iowa Department of Revenue and Finance, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa franchise tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of any underpayment of tax due for that prior year results from the carryback to such prior year of a net operating loss or net capital loss, the period shall be the period of limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

h. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

57.2(2) Waiver of statute of limitations. Waivers entered into before July 1, 1989. If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of 36 months' interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of the payment. *Northern Natural Gas Company v. Forst*, 205 N.W.2d 692 (Iowa 1973); *Phillips Petroleum Co. v. Bair*, State Board of Tax Review, Case No. 64, May 15, 1975.

57.2(3) Waiver of statute of limitations. Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

57.2(4) Amended returns filed within 60 days of the expiration of the statute of limitations for assessment. If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code Supplement sections 422.25 and 422.66.

701—57.3(422) Retention of records.

57.3(1) Every financial institution subject to the tax imposed by Iowa Code section 422.60 (whether or not the financial institution incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal schedules required by 701—subrule 58.3(2). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

57.3(2) In addition, records relating to computation of the Iowa apportionment factor, allocable income and other deductions or additions to federal taxable income shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitation for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

701—57.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such a deduction. *71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973)*.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

701—57.5(422) Jeopardy assessments.

57.5(1) A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

57.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 422.66.

701—57.6(422) Information deemed confidential. Iowa Code section 422.72 applies generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under Iowa Code section 422.72. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

701—57.7(422) Power of attorney. For information regarding power of attorney, see rule 701—7.34(421).

701—57.8(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the authorized assistants and employees the power to examine returns and make audits, and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code sections 422.66 and 422.70.

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